

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Mauricio Leon, #277794,)	C.A. No. 3:08-3332-TLW-JRM
)	
Petitioner;)	
)	
vs.)	ORDER
)	
Michael McCall, Warden;)	
Perry Corr Facility,)	
)	
Respondents.)	
_____)	

The Petitioner, proceeding *pro se*, brings this action seeking habeas relief pursuant to 28 U.S.C. § 2254. Petitioner is an inmate with the South Carolina Department of Corrections, serving twenty-five years on a drug conviction. Petitioner seeks release from custody.

On July 27, 2009, United States Magistrate Judge Joseph McCrorey, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.), filed a Report and Recommendation (“the Report”). In his Report, Magistrate Judge McCrorey recommends that the Respondents’ motion for summary judgment be granted and that the Petitioner’s motion to stay be denied. On August 14, 2009, Petitioner filed objections to the Magistrate’s Report.

This Court is charged with reviewing the Magistrate’s Report and the Petitioner’s objections thereto. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report

or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of this standard, the Court has carefully reviewed, de novo, the Report and the objections thereto. The Magistrate Judge recommends dismissal of Petitioner's claims for failure to exhaust, because of Petitioner's pending petition for writ of certiorari to the South Carolina Supreme Court. Petitioner does not contest that this petition for writ was pending when he filed this action. However, Petitioner's petition for writ was denied by the Supreme Court on February 4, 2009, and Petitioner has submitted proof of this fact.

On February 17, 2009, Respondents filed a supplemental memorandum in which they conceded that Petitioner now satisfied the exhaustion requirement. In this memorandum, Respondents argue that summary judgment is appropriate on the merits. Because Petitioner no longer has a pending state action, and because Respondents concede exhaustion, this case is remanded to the Magistrate Judge for consideration on the merits. Petitioner's motion to stay is now moot (Doc. # 9).

IT IS SO ORDERED.

S/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

August 31, 2009
Florence, South Carolina